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BEFORE THE

ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
SEAN DAVIS)
)
-vs-) No. 10-0177
)
COMMONWEALTH EDISON COMPANY)
)
Complaint as to billing/charges)
in Spring Grove, Illinois)

Chicago, Illinois

May 7, 2010

Met, pursuant to adjournment, at

10 o'clock a.m.

BEFORE :

MR. JOHN RILEY,
Administrative Law Judge

APPEARANCES :

MR. SEAN DAVIS
880 Pine Hill Drive
Antioch, Illinois
appearing pro se;

MR. MARK GOLDSTEIN
3019 Province Circle
Mundelein, Illinois
appearing for Commonwealth Edison
Company

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I N D E X

WITNESS DIRECT CROSS REDIRECT RECROSS EXMNR.

SEAN					
DAVIS		42			31
		48			46
WILLIAM M.					
MUELLER	53	66			69
TIMOTHY J.					
LEAHY	72	78			80
THOMAS R.					
RUMSEY	84	95	103	102	100
SEAN					
DAVIS					
(recalled)					105

E X H I B I T S

CWE FOR IDENTIFICATION IN EVIDENCE

No. 1	30	83
2	30	83
3	30	83
4	30	83
5	30	83
6	30	83
7	30	83
8	71	83
9	71	83
10(a)(b)(c)(d)	83	104

COMPLAINANT'S FOR IDENTIFICATION IN EVIDENCE

No. 1	51	52
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1 (Whereupon, CWE Exhibit
2 Nos. 1 thru 7 were marked
3 for identification.)

4 JUDGE RILEY: Pursuant to the direction of the
5 Illinois Commerce Commission, I call Docket No.
6 10-0177, complaint by Sean Davis vs. Commonwealth
7 Edison as to billing/charges in Spring Grove,
8 Illinois.

9 Mr. Davis, I understand that you are
10 appearing without counsel; is that correct?

11 MR. DAVIS: Yes.

12 JUDGE RILEY: And is it correct that your home
13 address is 880 Pine Hill Drive, Antioch, Illinois,
14 60002?

15 MR. DAVIS: Correct.

16 JUDGE RILEY: Mr. Goldstein, would you enter your
17 appearance for Commonwealth Edison.

18 MR. GOLDSTEIN: On behalf of Commonwealth Edison
19 Company, Mark L. Goldstein, 3019 Province Circle,
20 Mundelein, Illinois, 60060. My phone number is
21 847-949-1340. I have with me today Ms. Monica
22 Merino and Dan Kowalewski of Com Ed, as well as four

1 witnesses for the company.

2 JUDGE RILEY: Thank you.

3 And at this point in the evidentiary
4 hearing, Mr. Davis, I am going to put you under
5 oath.

6 (Witness sworn.)

7 SEAN DAVIS,
8 called as a witness herein, having been first duly
9 sworn, was examined and testified as follows:

10 EXAMINATION

11 BY

12 JUDGE RILEY:

13 Q. Would you state in narrative style, as
14 accurately and completely as you can, what the
15 circumstances are of your complaint against
16 Commonwealth Edison.

17 A. Okay. They came out and changed the meter,
18 because I had a question about the high bills, and I
19 thought --

20 Q. Do you remember when that was?

21 A. That was in March '06. I got it here.
22 Changed meter 1-2-07. They have it twice, changed

1 meter 4-17-08, so it was the earlier.

2 Q. Of 1-2-07?

3 A. Got to be.

4 Q. So January 2nd?

5 A. They only changed it once. I don't know
6 where this other came from.

7 Q. On January 2, '07 the respondent came out to
8 change the meter. That was at your request?

9 A. Yes.

10 Q. And then what happened?

11 A. Well, immediately when the meter was
12 changed, it was noticeably running slower. On the
13 line that goes across, that shows how I guess the
14 usage is running across the front of the unit, and
15 it goes at a certain speed, but when he put the new
16 one on, it was noticeably slower.

17 Q. All right.

18 A. How fast it was running across the screen
19 there, I noticed it. The installer commented he
20 noticed it, too.

21 The following month after the new meter
22 was put on, the bill dropped about \$135, which

1 nothing's changed as far as my usage went inside the
2 building or anything like that. I had changed
3 nothing.

4 So if I went back 18 months, which is
5 how long I had that meter on for, and the guy --
6 that's why I got 2882 (sic) is what I think I was
7 overcharged, and they put the new meter on, and I
8 just think these meters are I guess too modern for
9 this building 106-years old, and the bills are just
10 outrageous, and I can't understand how they're so
11 much higher. There's not that much -- I mean, the
12 place is half the size of my house and the bills are
13 almost three times what my home bill is, and that's
14 not much. It's a small little bar. There's not
15 that much going on in there.

16 Q. This is where I'm confused. You said you
17 were overcharged because of the old meter --

18 A. Right.

19 Q. -- apparently had been running too fast.

20 A. Apparently.

21 Q. And now you are saying that you are being
22 overcharged because of the new meter it seems.

1 A. I don't know for sure if I am or not. It
2 just seems that the bills are still high.

3 Q. But are they lower than they were when you
4 had the old meter?

5 A. Slightly.

6 Q. When was the second change in meter?

7 A. There was only one meter changed out that
8 I --

9 Q. That was back in January of '07?

10 A. Right.

11 Q. All right. Is this a single-family
12 dwelling?

13 A. It's a bar on the first floor and apartment
14 on the second floor.

15 Q. All right. And this is the one located at
16 2008 Main Street in Spring Grove, Illinois?

17 A. Correct.

18 Q. So it's commercial on the ground floor or
19 lower floor and residential on the upper floor?

20 A. Yes.

21 Q. And does anyone live on the upper floor?

22 A. Not -- it's in and out. It's a tenant, but

1 there's none there now.

2 And just to add a little something to
3 that, I got the bill for the last month actually a
4 couple of days ago, and I looked at it yesterday and
5 it says total current charges \$75.64. It's never
6 ever been that low in 3 1/2 years until I started
7 all this going on. All of a sudden, because
8 everything's going on, I feel now they're looking
9 into it and now I'm getting charged right.

10 Q. Now with regard to the residential, you said
11 that you rent that out sporadically --

12 A. Correct.

13 Q. -- from time to time.

14 Is it occupied now?

15 A. Not now, but it will be in a month.

16 Q. When's the last time you had anyone living
17 there?

18 A. Oh, approximately three months ago.

19 Q. How big of an apartment is it? Two
20 bedrooms? One bedroom?

21 A. Two bedrooms.

22 Q. Two bedrooms?

1 A. Two bedrooms, one bath.

2 Q. And is the entire building owned by you?

3 A. Yes. Well, I'm leasing it in a sense from

4 the previous owner, but it's under contract to me.

5 Q. You are leasing the building from the

6 previous owner?

7 A. From the previous owner. I'm paying the

8 mortgage -- his mortgage, and insurance, and

9 everything on the contract, that I'm going to get a

10 loan in a year or two.

11 Q. It's in someone else's name?

12 A. The actual building.

13 Q. This is by agreement you are paying the

14 other person's mortgage? It's by your part of your

15 rent agreement then?

16 A. Yes.

17 Q. And so you --

18 A. I pay everything there.

19 Q. I understand. Utilities?

20 A. (Witness nodded head.)

21 Q. And all the utilities are in your name?

22 A. Yes.

1 Q. Gas? Electric? Telephone?

2 A. Yes.

3 Q. And when you rent the residential property,
4 do you do that pursuant to contract or is it just,
5 for lack of a better term, "a gentleman's
6 agreement?"

7 A. Gentleman's agreement.

8 Q. So there's no actual signed leases or
9 anything like that?

10 A. No.

11 Q. And with regard to the commercial
12 establishment, you say is a bar?

13 A. Yes.

14 Q. Is that open 7 days a week?

15 A. No, it's open 6 days a week, closed on
16 Mondays, and the hours are 2 to 1 a.m., but actually
17 we are only open 1 a.m. on Friday and Saturday.

18 Q. It's 2 p.m. in the afternoon till
19 1 a.m.?

20 A. That's the amount of time we are allowed to
21 be open. Normally during the week we are actually
22 closed by 10.

1 Q. What kind of appliances do you have down
2 there?

3 A. There is a cooler behind the bar, which is
4 an 8-door cooler, and there's a standard
5 refrigerator, that you have in your own house, in
6 the back, two chest freezers, a walk-in cooler that
7 don't work and hasn't worked in years -- it's just a
8 walk-in cooler. It's got a fan blowing but no cool
9 air or anything like that -- and a keg cooler in the
10 basement.

11 Q. I'm sorry? A keg cooler?

12 A. Yes, a keg cooler, and it holds 8 kegs, just
13 one level, and there's a cooler that's like -- it's
14 a prep table with a cooler below, which is a 2,
15 3-door cooler below. That's pretty much it as far
16 as --

17 Q. Now is there a microwave?

18 A. Yes, microwave.

19 Q. You have got a blender?

20 A. Yes.

21 Q. Would it be accurate to say there's an array
22 of small electrical appliances behind the bar or

1 around the bar, too?

2 A. Yes. Well, the blender we never use it. I
3 mean, it's got dust on it. I have one in case I
4 need it, but it's barely ever used, and as far as
5 other small appliances, no. There's some lighting
6 around the bar. Other than that, it's just standard
7 lights. Nothing --

8 Q. And does the bar provide food service?

9 A. Yes.

10 Q. So there is -- is there a kitchen? Is there
11 just a grill?

12 A. It's a kitchen. It's a grill, but there's
13 no electric as far as the appliances go. I mean, as
14 far as the cooking appliances go, it's all gas.

15 Q. It's all gas?

16 A. Yes.

17 Q. What was the most recent bill that you had
18 just mentioned?

19 A. I just got that from this past month. It's
20 from issue day April 29th, due on May 14th, service
21 from 3-30-2010 to 4-20-2010, 30 days, 75.64.

22 Q. 75.64?

1 A. Correct. First bill I believe I got below
2 \$300.

3 Q. And what is the total amount that the
4 Commonwealth Edison Company has --

5 A. Altogether, I believe --

6 Q. -- I should say, on that bill?

7 A. -- 11,562.51.

8 Q. Eleven thousand --

9 A. 562.51.

10 Q. Is it also my understanding from our prior
11 conversation during the prehearing conference in
12 this matter that the upstairs and downstairs are not
13 separately metered?

14 A. Correct.

15 Q. And the meter is in your name --

16 A. Yes.

17 Q. -- so that when electricity is being used
18 upstairs it is all going through the same -- the
19 single meter --

20 A. Yes.

21 Q. -- in conjunction with the bar also?

22 A. Yes.

1 Q. Right?

2 And you have brought that to

3 Commonwealth Edison's attention?

4 A. Oh, yeah.

5 Q. And what is their response?

6 A. No response.

7 Q. Have you made any effort to have the wiring
8 adjusted or fixed?

9 A. Yes. Well, I have spoken to an electrician.
10 I spoke to the guy when he was out changing the
11 meter about what that would entail, and he said you
12 need to get a chase or run down to where the other
13 meter is next to it so they can come out and put
14 another meter on. And when I talked to the
15 electrician, which is a friend of mine, he said him
16 and another guy could do it. It would probably take
17 them a day or two and I'm looking at \$2,000 to get
18 that done.

19 Q. And has that work been done?

20 A. No, sir.

21 Q. As of right now, there's still the single
22 meter?

1 A. Yes.

2 JUDGE RILEY: That's all the questions that I
3 have for right now.

4 Mr. Goldstein, did you want to
5 cross-examine Mr. Davis?

6 MR. GOLDSTEIN: Yes.

7 CROSS EXAMINATION

8 BY

9 MR. GOLDSTEIN:

10 Q. Mr. Davis, is it not true that the meter was
11 actually exchanged on April 17, 2008?

12 A. I'm just going by what it says here.

13 Q. Well, do you recall when the meter was
14 exchanged --

15 A. I believe --

16 Q. -- precisely?

17 A. Not off the top of my head.

18 Q. Now is there any air conditioning --

19 A. There's an --

20 Q. -- for this building?

21 A. For the bar.

22 Q. And is that central air or --

1 A. That's a central air unit, yes. Fairly new,
2 too.

3 Q. You understand, do you not, that for a
4 commercial establishment you may not get a
5 residential meter to meter a commercial
6 establishment? Has that been explained to you?

7 A. Just in the last -- you know, since I've
8 talked to you guys last --

9 Q. Okay.

10 A. -- and whatever explanation.

11 Q. With respect to the \$2,000 quote that you
12 received from an electrician, do you know what work
13 was the electrician going to do?

14 A. He was going to separate the apartment from
15 the bar in the kitchen so that it's separate meters.

16 Q. And you understand, do you not, that it is
17 your responsibility to do that, make that
18 separation?

19 A. No, I don't agree with it.

20 Q. You think that Commonwealth Edison should
21 pay for that?

22 A. If it's needed to be done. If it's a must

1 thing by law or something, then, yeah. But if --
2 but if it's voluntary from whatever, then I would
3 suppose it would be under my -- because it's my
4 building, but --

5 Q. Exactly.

6 Now you talked about receiving a bill,
7 your current bill.

8 A. Yes.

9 Q. Is that based on actual usage or is that an
10 estimated bill do you know?

11 A. You want to see it?

12 Q. Yes.

13 JUDGE RILEY: It should say actual or
14 estimated on it somewhere. It's kind of hard to
15 pick out sometimes.

16 MR. GOLDSTEIN: Q. Could we see the bill?

17 (Bill tendered.)

18 MS. MERINO: Thank you.

19 JUDGE RILEY: Off the record.

20 (Off the record.)

21 We are back on.

22 MR. GOLDSTEIN: Are we going to mark this as an

1 exhibit, Judge?

2 JUDGE RILEY: I'm not sure. Well, what's the
3 answer to the question? Is it actual or estimated?

4 MR. GOLDSTEIN: It's an actual bill, but the
5 previous month was estimated and this is the make-up
6 bill.

7 JUDGE RILEY: All right.

8 MR. GOLDSTEIN: And so it might be helpful to
9 have this in the record.

10 JUDGE RILEY: All right.

11 MR. GOLDSTEIN: But Mr. Davis testified to it.

12 JUDGE RILEY: We will get back to the
13 complainant.

14 MR. GOLDSTEIN: But it doesn't -- you know, it is
15 not an exhibit. That's I guess okay, too, but we
16 have a meter history.

17 JUDGE RILEY: He showed it to you for purposes of
18 determining whether it's estimated or actual.

19 MR. GOLDSTEIN: We can explain it.

20 JUDGE RILEY: It's an actual reading, and the
21 prior reading was estimated?

22 MR. GOLDSTEIN: Correct. I don't believe I have

1 anything else of the witness.

2 JUDGE RILEY: All right. Mr. Davis, did you want
3 to offer that exhibit -- that document as an exhibit
4 into evidence?

5 MR. DAVIS: Sure, I guess. Can I get a copy of
6 it?

7 JUDGE RILEY: Certainly. Absolutely. Did you
8 have any other documentation that you wanted to --

9 MR. DAVIS: No. I mean, it's pretty much
10 everything that they sent me is all. I have what
11 they have sent me. I have some of what they sent
12 me. I don't have anything else.

13 EXAMINATION

14 BY

15 JUDGE RILEY:

16 Q. I will get back to the document in just a
17 minute. I didn't quite understand your answer to
18 Mr. Goldstein's question when he asked you whether
19 or not you believe it was your responsibility
20 to --

21 A. Well, the reason --

22 Q. -- have the wiring altered to accommodate

1 the second meter.

2 A. If it's something that's required, I think I
3 should have been notified somehow of this when I
4 purchased the building that they -- that it was
5 whether it be Com Ed when I called up to sign up
6 with them or how ever, but if it's a volunteer thing
7 that needs to be done, then, obviously, it's my
8 property, then, yes, I agree, I would be the one
9 responsible for doing that.

10 Q. But you think if there's a legal requirement
11 that someone should have brought it to your
12 attention --

13 A. Absolutely.

14 Q. -- at the time you bought the building?

15 A. Absolutely.

16 Q. You haven't closed on the building, have
17 you?

18 A. No. Technically not. It's under -- I mean,
19 I have a separate contract with the guy that owns it
20 that everything is mine.

21 Q. But that's your responsibility for the
22 payments?

1 A. Yes.

2 Q. But the ownership is still in his name?

3 A. Correct.

4 Q. It's in someone else's name?

5 A. Of the property, yes.

6 JUDGE RILEY: Anything further?

7 CROSS EXAMINATION

8 BY

9 MR. GOLDSTEIN:

10 Q. Just one other question, Mr. Davis. When

11 you purchased the property on contract --

12 A. Yes.

13 Q. -- when was that?

14 A. That was 2006, November 2006.

15 JUDGE RILEY: Mr. Goldstein, I don't believe

16 there's a purchase here. There's a contract.

17 MR. GOLDSTEIN: It's a contract to purchase.

18 JUDGE RILEY: Not for purchase. The deed is

19 still in someone's else's name.

20 THE WITNESS: It is.

21 JUDGE RILEY: But he has contracted to live in

22 and to pay the bills, to pay the utilities and the

1 mortgage.

2 THE WITNESS: And to purchase the property.

3 JUDGE RILEY: And it's to purchase the property?

4 THE WITNESS: Yes. Yes. I just haven't gotten
5 the loan to purchase the property yet.

6 MR. GOLDSTEIN: I believe I stated the question
7 correctly, Judge.

8 JUDGE RILEY: I guess it's a situation, I'm just
9 not clear, as to is your name -- do you have -- is
10 there a title with your name on it?

11 MR. DAVIS: No, there's not a title with my name
12 on it, but everything is involved with the building,
13 except for that, including insurance and everything
14 is in my name.

15 JUDGE RILEY: Are the payments that you are
16 making on the building, the mortgage, and that type
17 of thing --

18 THE WITNESS: Go to --

19 JUDGE RILEY: -- go toward the purchase?

20 THE WITNESS: Yes. Yes.

21 JUDGE RILEY: Once you reach a certain point in
22 those payments, the deed will be turned over to you?

1 THE WITNESS: Yes.

2 MR. GOLDSTEIN: And there will be a formal
3 closing.

4 THE WITNESS: I believe so, yes.

5 MR. GOLDSTEIN: I forgot my question. Just a
6 moment, Judge.

7 (A brief pause.)

8 MR. GOLDSTEIN: Q. I assume, Mr. Davis, back in
9 2006 you contacted Com Ed to put the building's
10 electric service in your name?

11 A. Yes.

12 Q. Did you inform Com Ed at that time that
13 there was a bar and commercial -- a commercial bar
14 on the first floor and a resident unit on the second
15 floor?

16 A. If I recall, yes, I did.

17 Q. And did you also inform that there was only
18 one meter serving both?

19 A. I do not remember if I did or not.

20 Q. And did --

21 A. Didn't know it mattered at that point.

22 Q. Were you informed by the person from whom

1 you are under contract to purchase the building that
2 the bar and the residential unit on the second floor
3 should be separately metered?

4 A. No.

5 MR. GOLDSTEIN: I have nothing else, Judge.

6 JUDGE RILEY: Mr. Davis, I was going to take your
7 motion to admit the document. Let me see it.

8 (Document tendered.)

9 Let the record reflect that it appears
10 to be a standard bill from Commonwealth Edison for
11 Account 3414663025 in the name of Sean Davis at 2008
12 Main Street Road, Spring Grove, Illinois, and I'm
13 going to mark this as Complainant's Exhibit No. 1.

14 (Whereupon, Complainant's
15 Exhibit No. 1 was marked
16 for identification.)

17 MR. DAVIS: Okay.

18 JUDGE RILEY: Mr. Goldstein, do you have any
19 objection to the motion to admit this into evidence?

20 MR. GOLDSTEIN: No objection. It's a Com Ed
21 bill.

22

1 (Whereupon, Complainant's
2 Exhibit No. 1 was received
3 in evidence.)

4 JUDGE RILEY: I'll leave it with you for the time
5 being. Remind me to make copies. It will just take
6 a second. I take it you have nothing further?

7 MR. GOLDSTEIN: I have nothing.

8 JUDGE RILEY: I don't have any further questions
9 either. Mr. Davis, for the time being, we will
10 conclude your case in chief.

11 Mr. Goldstein, you want to start.

12 MR. GOLDSTEIN: Yes, I would.

13 JUDGE RILEY: Well, let me -- you want to take
14 five minutes. Be back in five minutes.

15 (Whereupon, a break was
16 taken.)

17 Back on the record. We have completed
18 the complainant's case in chief. Mr. Goldstein, did
19 you want to call a witness?

20 MR. GOLDSTEIN: Yes. My first witness is William
21 M. Mueller.

22 JUDGE RILEY: Mr. Mueller -- could we make a spot

1 for him at the table.

2 MS. MERINO: Of course.

3 (Witness sworn.)

4 Please proceed.

5 WILLIAM M. MUELLER,

6 called as a witness herein, having been first duly

7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY

10 MR. GOLDSTEIN:

11 Q. Mr. Mueller, please state your full name,

12 and by whom you are employed, and in what capacity?

13 A. William M. Mueller. I'm employed by

14 Commonwealth Edison as a principal rate

15 administrator in the retail rates department.

16 Q. And how long have you been employed at

17 Com Ed?

18 A. Thirty-two years.

19 Q. And how long have you been in your current

20 position?

21 A. Eleven years.

22 Q. Could you describe your duties as a senior

1 rate administrator?

2 A. I internally consult with our account
3 representatives, our new business engineering, and
4 customer service personnel in regard to
5 administration of the tariffs and in accordance with
6 the Administrative Code and the Public Utilities
7 Act.

8 Q. And what type of education did you have
9 which relates to your position with Com Ed?

10 A. I have a bachelor's and a master's degree in
11 engineering -- electrical engineering, and a
12 master's in management.

13 Q. And during your employment with Com Ed, have
14 you taken special courses? And, if so, what type of
15 courses have you taken -- in training have you had?

16 A. I have taken classes in engineering, in
17 basic supervision, communications.

18 Q. All right. And how did you become familiar
19 with the complaint filed by Sean Davis in this
20 matter?

21 A. I was contacted by our regulatory people,
22 Monica Merino, and I was asked to review the billing

1 for the complainant's account and conference with
2 those people.

3 Q. And were you advised that the building that
4 was in question had a bar on the main level and
5 residential unit on the second level of the
6 building?

7 A. Yes.

8 Q. And were you also advised that both the bar
9 and the residential unit were being serviced by a
10 single-demand meter?

11 A. Yes.

12 Q. And were you also advised that Mr. Davis
13 wanted the demand meter replaced by a
14 residential-type meter?

15 A. Yes.

16 Q. And were you requested to make a comparison
17 of what his bills would have been whether he had a
18 demand meter or a residential meter in place to
19 require electric usage at the bar and residential
20 unit?

21 A. I made a comparison in regard to the
22 delivery charges for the non-residential rate versus

1 the watt-hour only non-residential rate.

2 Q. Let me show you what's been marked as Com Ed
3 Exhibit 1. Do you have that in front of you?

4 A. Yes, I do.

5 Q. Could you go through that exhibit and
6 explain what is contained on the exhibit?

7 A. Yes. I looked at the time period from
8 December 31st of '08 to December 31st of '09 and I
9 added up the usage in kilowatt-hours and also the
10 usage in KW demand. I then applied the DFC, which
11 is the acronym for the distribution facility charge,
12 under the delivery tariff for Com Ed. I applied the
13 per kilowatt-hour DFC to the kilowatt-hours in that
14 time period and simply multiplied those together and
15 came up with an annual charge of \$1156.70, then I
16 took the KW demand for that same time period,
17 totaled that up, and then multiplied by the
18 distribution facilities' charge applicable to the
19 non-residential rate for small commercial and
20 multiplied that out and came up with a charge of
21 \$829.36.

22 Q. And what conclusion did you come to with

1 respect to whether the complainant is better off
2 having a demand meter at his premises or a
3 residential-type meter?

4 A. In this comparison, it was clear to me that
5 the demand meter would have resulted in lower
6 delivery charges.

7 Q. And, thus, that would lead to lower electric
8 bills for this customer?

9 A. Correct.

10 Q. Now the meter that is presently serving
11 Mr. Davis is a demand meter; is that right?

12 A. Yes.

13 Q. And is that the type of meter that has --
14 that results in a lower cost to Mr. Davis on his
15 electric bills?

16 A. In this case, yes.

17 Q. Now also there are several tariffs that are
18 involved in the serving of Mr. Davis, are there not?

19 A. Yes.

20 Q. And those exhibits have been marked Exhibits
21 2 through 7. Do you have that in front of you?

22 A. Yes, I do.

1 Q. Could you go through those exhibits and
2 explain what is involved in providing electric
3 service to Mr. Davis' account?

4 JUDGE RILEY: What exhibit are we on?

5 MR. GOLDSTEIN: Starting with Exhibit 2.

6 JUDGE RILEY: All right. Go ahead.

7 THE WITNESS: Exhibit 2 is one of the sheets from
8 Com Ed's filed tariff called "General Terms and
9 Conditions," and on the bottom of that tariff sheet
10 there is a part titled "Resale or Redistribution,"
11 and it indicates that the resale or redistribution
12 of electric power is prohibited, and that in the
13 case of Mr. Davis when they have residential
14 premises and non-residential premises that the
15 Administrative Code and the Com Ed tariffs require
16 that those entities be separately metered.

17 MR. GOLDSTEIN: Q. Now let's go on to
18 Respondent's -- I'm sorry -- Complainant's (sic)
19 Exhibit 3. Do you have that in front of you?

20 A. Yes, I do.

21 Q. And this is --

22 JUDGE RILEY: You said Complainant's Exhibit 3?

1 MR. GOLDSTEIN: I said Com Ed.

2 JUDGE RILEY: Com Ed.

3 MR. GOLDSTEIN: I started with Respondent's, but
4 I didn't say complainant's.

5 JUDGE RILEY: Okay.

6 MR. GOLDSTEIN: Q. Do you have Com Ed Exhibit 3
7 in front of you?

8 A. I do. Again, this is another sheet from
9 Com Ed's General Terms and Conditions continuation
10 on the Resale or Redistribution part. It indicates
11 that there are certain conditions where a customer
12 would be determined not to be engaged in retail or
13 redistribution, and in this case Mr. Davis does not
14 fall into any of these exceptions.

15 Q. Let's go on to Exhibit No. 4. Would you
16 explain what is shown on that exhibit that relates
17 to this complaint?

18 A. This, again, is a tariff sheet from Com Ed's
19 General Terms and Conditions. It defines the
20 various sectors that are in -- that make up the
21 customer base for Com Ed. It defines what a
22 residential customer is and indicates that a

1 residential customer could be a single or a
2 multiple-residential unit and that the service is
3 being used for mainly residential purposes.

4 Q. Is that your understanding of the premises
5 that's the subject of this complaint?

6 A. Yes, that was part of it.

7 Q. And so is the building that is involved in
8 this complaint primarily a residential service or a
9 commercial service?

10 A. It is primarily a non-residential service.

11 Q. Let's go on to Respondent's Exhibit -- I'm
12 sorry -- Com Ed Exhibit 5. Do you have that in
13 front of you?

14 A. Yes, I do.

15 Q. And could you explain what is shown on that
16 exhibit that relates to this complaint?

17 A. Again, this is General Terms and Conditions,
18 one of Com Ed's filed tariffs. On this sheet it
19 defines the customer bases into delivery classes and
20 defines the four residential delivery classes,
21 single family, and multi-family, with and without
22 electric space heating.

1 Q. And how does that relate to this complaint?

2 A. Again, it defines that a residential
3 customer would be engaged -- or the use at a
4 residential customer's premises would be primarily
5 for residential purposes.

6 Q. And let's now turn to Com Ed Exhibit 6,
7 and, just for purposes of following along, it's
8 entitled "General Terms and Conditions Metering."

9 Could you explain what is shown on that
10 tariff that relates to this complaint?

11 A. Yes. In this part in Paragraph 6 it speaks
12 to when a demand meter would be required for a
13 non-residential customer. When a customer uses or
14 is estimated to use either 2000 kilowatt-hours a
15 month or 10 KW in demand that a demand meter is
16 required in order to bill under the correct rates.

17 Q. And does Mr. Davis' building fall into that
18 category?

19 A. Yes, it does.

20 Q. Let's now turn to a larger exhibit, Com Ed
21 Exhibit 7. And could you explain what is shown on
22 this multi-page exhibit?

1 A. This exhibit is a historical tariff Rate 1
2 residential service that was in effect all the way
3 up to January 1st of 2007, and on this particular
4 sheet, 16th Revised Sheet No. 10, towards the
5 bottom, the second to the last paragraph, it states
6 that "when a residence and a business are combined
7 into one premises that unless the preponderant use
8 requirement is for residential purposes, that
9 residential service would not be allowed."

10 Q. You have heard Mr. Davis' testimony with
11 respect to the type of usage that this building
12 has. Do you believe that the preponderant usage in
13 Mr. Davis' building is residential or commercial?

14 A. Commercial.

15 Q. Is there anything else you would like to
16 point out with respect to the remainder of Com Ed
17 Exhibit 7?

18 A. I'm not sure if this is part of Exhibit 7 or
19 a new exhibit, but this would be the current General
20 Terms and Conditions is all part of it.

21 Q. Okay.

22 A. Again, this is the current General Terms and

1 Conditions, and under the section titled
2 "Residential Sector" it basically repeats the
3 provision in Rate 1 that was in effect up till
4 January 1 of '07 where it states that the
5 preponderant use in a multiple premise -- multiple
6 customer building that is combined into one must
7 be -- the majority of the use must be for
8 residential purposes in order to be billed as a
9 residential customer.

10 Q. Is it the customer's responsibility to
11 inform Com Ed if there's any change in load or any
12 upgrade in a particular building?

13 A. Yes.

14 Q. And is that also found in Com Ed tariffs?

15 A. It is in General Terms and Conditions, yes.

16 JUDGE RILEY: What exhibit are you on now?

17 THE WITNESS: Pardon me?

18 JUDGE RILEY: Is that still Exhibit 7?

19 MR. GOLDSTEIN: No, it's not part of what we have
20 here.

21 THE WITNESS: It's not part of Exhibit 7.

22 MR. GOLDSTEIN: We could provide that, your

1 Honor.

2 JUDGE RILEY: Okay. What is he testifying to
3 then? He said that the --

4 MR. GOLDSTEIN: The question is who has the
5 responsibility to inform Com Ed -- whether the
6 customer has the responsibility to inform Com Ed if
7 there's any change in load or any upgrade in the
8 service.

9 JUDGE RILEY: Okay.

10 MR. GOLDSTEIN: Q. And the answer is?

11 A. Yes.

12 Q. And what is the basis for your response?

13 A. It is written as such in Com Ed's current
14 General Terms and Conditions.

15 JUDGE RILEY: And where are the -- how would a
16 customer know anything about Com Ed's current terms
17 and conditions? That's my question. What are the
18 current terms and conditions? Is there a policy
19 manual?

20 MR. GOLDSTEIN: It's a tariff. These are
21 tariffs, Judge.

22 JUDGE RILEY: That's what I was asking. Is it in

1 one of the tariffs that's before us now?

2 MR. GOLDSTEIN: Not before us, Judge, and I was
3 going to ask that we would provide that as a
4 late-filed exhibit.

5 JUDGE RILEY: Okay. Fine.

6 MR. DAVIS: How would I get it?

7 MR. GOLDSTEIN: I'll provide that to you also.

8 JUDGE RILEY: He will get a copy to you.

9 MR. DAVIS: I mean, in general, how would I get
10 that without all this happening?

11 JUDGE RILEY: Okay. That's part of your
12 cross-examination.

13 MR. GOLDSTEIN: Q. Now to summarize,
14 Mr. Mueller, should Mr. Davis be provided electric
15 service through a residential-type meter?

16 A. No.

17 Q. And what would be the reasons why not?

18 A. The preponderance of use in that building
19 are for non-residential purposes. The code and the
20 tariffs require that when you have separate
21 premises, separate customer types, they need to be
22 separately metered in order that they can be billed

1 properly.

2 Q. And are you aware of what particular section
3 of the Commission's rules relate to having there be
4 separate metering for residential and commercial in
5 the same building?

6 A. It would be 83 Illinois Administrative Code
7 Part 410, Section 130.

8 MR. GOLDSTEIN: I have nothing else of the
9 witness. I would move into evidence Com Ed Exhibits
10 1 through 7.

11 JUDGE RILEY: All right. I will take your motion
12 under advisement. Let's wait until
13 cross-examination.

14 Mr. Davis, you can cross-examine
15 Mr. Mueller on anything that he has testified to.

16 CROSS EXAMINATION

17 BY

18 MR. DAVIS:

19 Q. All right. So what was the date that you
20 actually got told about this case?

21 A. I don't recall the exact date. It was
22 probably about two weeks ago.

1 Q. And then back to what we were just talking
2 about, how would I know or find out any of these
3 tariffs or anything like that without having any
4 knowledge of it at all without -- you know, like if
5 I had known anything about it, I could have called
6 and asked, but not knowing anything about what you
7 just talked about, no clue at all, how am I suppose
8 to find that out?

9 A. There's two basic ways. One is all of
10 Com Ed's tariffs are filed on the Com Ed website
11 that any customer can get into, or, if desired, you
12 can come to our office and we will open up our
13 tariffs and you can look at our tariffs.

14 Q. There's no one there that would inform me of
15 that when I signed up in the beginning to get this
16 taken care of -- to get electric service to the
17 building and the whole shebang? No one would inform
18 me that is required?

19 A. If you would have asked a specific question,
20 our customer rep would have answered.

21 Q. What would that specific question, in your
22 opinion, should have been?

1 A. Well, at that time if you had a separate
2 residence and a separate non-residential premise,
3 and you made that known to them, and that there was
4 only one meter, they would have advised you that
5 they could have been separated.

6 Q. I was never advised of anything like that.

7 A. Okay.

8 Q. And then that was it. That was it. Why
9 wouldn't I have been -- do you know why I wouldn't
10 have been informed of this when I did so tell them
11 when I signed up that there's an apartment upstairs,
12 and a bar downstairs, and I needed electric service
13 in my name, was never questioned any farther than
14 that, except, okay, let's set you up? Is there any
15 reason why I may not have been informed?

16 A. Not being a party to that conversation, I
17 couldn't answer that.

18 MR. DAVIS: That's really all I have for him.

19 JUDGE RILEY: I have just a couple questions of
20 my own.

21

22

1 EXAMINATION

2 BY

3 JUDGE RILEY:

4 Q. What is a demand meter as opposed to a
5 regular meter?

6 A. A demand meter will measure not only the
7 kilowatt-hour use, which is the unit of measuring
8 the energy, but it will also measure the maximum
9 rate at which that energy is used, and that's
10 measured in kilowatts, not kilowatt-hours, and
11 that's the basic difference.

12 Q. And is that the calculations reflected in
13 the upper right corner of Com Ed Exhibit 1?

14 A. Yes.

15 Q. So one reflects the demand meter and one
16 reflects a regular meter --

17 A. Correct.

18 Q. -- or a non-demand meter?

19 A. Correct.

20 Q. Down in the lower left -- the far lower left
21 corner of the same exhibit, the date 12-29-2006 --
22 it's hard to read I understand -- does that reflect

1 the date that Mr. Davis became a customer of Com Ed
2 at this address or under this account?

3 A. I don't know that.

4 Q. Do you know when he became a customer?

5 A. No, I don't.

6 MR. DAVIS: That --

7 JUDGE RILEY: Excuse me. Mr. Davis, that's okay.

8 MR. GOLDSTEIN: Judge, we have another witness to
9 testify with respect to the meter reading history.

10 JUDGE RILEY: All right. Okay. That's all I
11 have for Mr. Mueller. Call your next witness,
12 Mr. Goldstein.

13 MR. GOLDSTEIN: We have other exhibits to mark,
14 Judge. Perhaps we should take a short recess and
15 then come back and I'll call the next witness.

16 JUDGE RILEY: How much of this is there?

17 MR. GOLDSTEIN: Not a lot.

18 JUDGE RILEY: I'm sorry?

19 MR. GOLDSTEIN: Not a lot of exhibits.

20 JUDGE RILEY: All right then --

21 MR. GOLDSTEIN: Maybe three or four more.

22 JUDGE RILEY: So you want to take the time to

1 mark those first?

2 MR. GOLDSTEIN: Yes, please.

3 JUDGE RILEY: How much longer are your witnesses
4 going to take? Hours?

5 MR. GOLDSTEIN: No. No. No. I'm hoping we will
6 finish in about an hour.

7 JUDGE RILEY: Okay. Let's take a brief recess.

8 MR. GOLDSTEIN: Thank you, Judge.

9 JUDGE RILEY: Let's go off the record.

10 (Whereupon, Com Ed Exhibit
11 Nos. 8 & 9 were marked for
12 identification.)

13 Okay. We are back on the record.

14 MR. GOLDSTEIN: My next witness --

15 JUDGE RILEY: Mr. Goldstein, at the conclusion of
16 your witnesses, I am going to recall Mr. Davis for
17 just a few more questions that occurred to me --

18 MR. GOLDSTEIN: Certainly.

19 JUDGE RILEY: -- and then you will have an
20 opportunity to cross again.

21 Please proceed.

22 MR. GOLDSTEIN: All right. Next witness is

1 Timothy Leahy.

2 JUDGE RILEY: Good morning, Mr. Leahy.

3 Please proceed.

4 TIMOTHY J. LEAHY,

5 called as a witness herein, having been first duly

6 sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY

9 MR. GOLDSTEIN:

10 Q. Please state your full name, and by whom are

11 you employed, and in what capacity?

12 A. Timothy J. Leahy. I'm employed by

13 Commonwealth Edison as a billing manager.

14 Q. In the billing department?

15 A. Correct.

16 JUDGE RILEY: Billing?

17 THE WITNESS: Billing manager.

18 JUDGE RILEY: Building manager?

19 THE WITNESS: Correct.

20 MR. GOLDSTEIN: Q. And how long have you been

21 employed by Com Ed and how long have you been in

22 Com Ed's billing department?

1 A. I've been employed by Com Ed for just under
2 20 year and been in the billing department for about
3 ten years.

4 Q. And how long have you been a manager in the
5 billing department?

6 A. In the last 18 months.

7 Q. Could you describe what your duties are as a
8 manager in the billing department?

9 A. Currently, as a billing manager, I run the
10 day-to-day operations of the billing clerks working
11 on delayed accounts and billing adjustments.

12 Q. And what is the purpose of your testimony in
13 this proceeding today?

14 A. I was asked to review the complainant's
15 account, to review the reading history, to see if
16 the readings are in or out of line based on the
17 bills for the customer.

18 Q. And after reviewing Mr. Davis' electric
19 account, what conclusions did you come to?

20 A. The readings were all actual readings taken
21 on the meter, on both the old meter and the new
22 meter, except for the last month, which was the

1 March bill. I believe the readings are all in line.

2 The readings are progressive and the bill is

3 correct.

4 Q. Okay. And why do you believe that Mr. Davis

5 is being properly served by a demand meter?

6 A. Based on Mr. Mueller's testimony, I would

7 agree that it's preponderant of usage. It's

8 commercial usage, and it would be billed a demand

9 meter based on historical usage.

10 Q. Now you are sponsoring two exhibits today.

11 The first exhibit, if you have that in front of you,

12 is Com Ed Exhibit 8.

13 (Document tendered.)

14 A. Thank you.

15 Q. Could you describe what that exhibit is?

16 A. Exhibit 8 is showing the meter reading

17 history for the account before and after the

18 exchange, so it's giving you the from-and-to

19 readings, the source, the total kilowatt-hour usage,

20 the found and left read, in order to know what the

21 demand usage was, which is there, too.

22 Q. Now there's a line item near the bottom of

1 the page for January 2, 2007 -- do you see that --

2 A. Correct.

3 Q. -- and also below that December 29, 2006.

4 Was the meter actually exchanged on
5 either one of those dates?

6 A. No, sir.

7 Q. What actually occurred?

8 A. On January 2nd of '07 we converted our old
9 rate structure to our new rate structure as of
10 January 2nd 2007, so every account that went through
11 the billing cycle had to have, what I would call, a
12 meter exchange for itself. There wasn't physically
13 an exchange in the field, but it's exchanged in the
14 system in order to bill the old tariffs for the
15 first part of the month and then the new tariffs in
16 the second part of the month.

17 Q. Does the meter reading history show when the
18 old meter was changed for a new meter?

19 A. On 4-17 of 2008.

20 Q. And that's about half way up the page on
21 Com Ed Exhibit 8?

22 A. Correct.

1 Q. Is there anything else you would like to
2 point out with respect to this exhibit?

3 A. No, sir.

4 Q. Let me show you what has been marked as
5 Com Ed Exhibit No. 9. Could you tell us what --
6 that exhibit is entitled "Com Ed Account Activity
7 Statement?" Could you explain what is shown on that
8 exhibit?

9 A. This is showing all the activities in regard
10 to the financial activities along with the readings
11 and the to-and-from areas of the customer's account
12 along with payments.

13 Q. And other than showing the payments and the
14 billings, how does that differ from the meter
15 reading history of Com Ed Exhibit 8?

16 A. The metering history is giving you the
17 metering history along with the demand usage. The
18 activity statement gives you the reading filed
19 here.

20 Q. And --

21 A. It gives you the read and KWH, and the KW is
22 over to the far right. So it gives you the same

1 information, and it also includes financial
2 activities.

3 Q. And you heard Mr. Davis testify with respect
4 to his current electric bill that his balance is
5 \$11,562.51; is that correct?

6 A. Correct.

7 Q. And does the activity statement, Com Ed
8 Exhibit 9, show when Mr. Davis last made a payment
9 on his electric bill?

10 A. It does. The last payment appeared on
11 2010 -- 2-10 of 10, 2010, in the amount \$700.

12 Q. Now with respect to Com Ed Exhibits 8 and 9,
13 are these exhibits part of the company's books and
14 records?

15 A. Yes.

16 Q. And are they kept in the ordinary course of
17 Com Ed's business as a public utility?

18 A. Yes.

19 Q. And, as a manager in the billing department,
20 do you have access to these books and records?

21 A. Yes.

22 Q. Is there anything else you would like to add

1 to your testimony?

2 A. No, sir.

3 MR. GOLDSTEIN: Mr. Leahy is available for
4 cross-examination. I would move into evidence
5 Com Ed Exhibits 8 and 9.

6 JUDGE RILEY: Again, I'll hold in abeyance and my
7 ruling in abeyance.

8 Mr. Davis, do you have any questions
9 for Mr. Leahy?

10 MR. DAVIS: Yes.

11 CROSS EXAMINATION

12 BY

13 MR. DAVIS:

14 Q. Why wasn't the last month the actual
15 reading, the bill that I just got, the one previous
16 to that?

17 A. I couldn't tell you why they missed the
18 reading. They weren't able to obtain an actual
19 reading on the account.

20 Q. It just happened this previous month that
21 all this is going on.

22 A. I couldn't answer why the meter reader

1 missed the reading.

2 Q. It seems fishy.

3 And are you saying never -- if I
4 understand you properly, are you saying the meter
5 was changed out or never changed out since I've had
6 it?

7 A. The meter was exchanged on 4-17 of 2008.

8 Q. Okay. Even though it says 3-27 on here?

9 A. 3-27 -- if you look at the change out
10 reading on the row, that's --

11 Q. I got you.

12 Other than that, I just can't decipher
13 any of this stuff. I'm just going by -- with this
14 question from when was it originally changed out in
15 2006, like when I took over, it's got 3179, 17,900
16 readings, and then the very next estimated
17 reading -- do you see that --

18 A. Yes.

19 Q. -- 22,000 or 22,319?

20 A. Correct.

21 Q. Why does it change so much and why does it
22 go --

1 A. That's the actual reading and actually the
2 estimated reading there.

3 Q. Well, the estimated read it says.

4 A. Right. It says estimated, but that was not
5 used for billing. If you scroll over to the right
6 there, do see where it says "do not bill?" So your
7 actual reading that you did get is on 1-31-07 of
8 22270?

9 Q. Okay. And that's how much was used
10 between -- in two months, right?

11 A. No, that was what was used between
12 January 2nd of 2007 to January 31st of 2007.

13 Q. Okay. Which is approximately -- this is at,
14 what it says next to it, 48378?

15 A. Correct.

16 MR. DAVIS: Okay. That's all I have.

17 EXAMINATION

18 BY

19 JUDGE RILEY:

20 Q. Okay. Just one quick question of my own,
21 Mr. Leahy. Referring to Com Ed Exhibit 8, were
22 there actually two meter changes involved here with

1 this structure?

2 A. Two physical meter exchanges? No.

3 Q. Right. Because it says changed meter on

4 1-2-07 --

5 A. Correct.

6 Q. -- and then you have a changed meter on

7 4-17-08.

8 A. The 1-2-07 was exchanged inside the system

9 in order to bill the old rate and the new rate. It

10 was not physically exchanged.

11 Q. That was conversion of the rate structure

12 you talked about?

13 A. Right.

14 Q. So it was not a maximum meter change -- it

15 wasn't a physical meter change?

16 A. Correct.

17 JUDGE RILEY: I have nothing further.

18 MR. GOLDSTEIN: I have no redirect of the

19 witness.

20 JUDGE RILEY: Thank you, Mr. Leahy.

21 THE WITNESS: Again, Judge --

22 JUDGE RILEY: We have nine exhibits pending right

1 now.

2 MR. GOLDSTEIN: You want to keep going?

3 JUDGE RILEY: Let's take care of it. You move

4 for the admission --

5 MR. GOLDSTEIN: Yes.

6 JUDGE RILEY: -- of Com Ed 1 through 9.

7 Mr. Davis, you have had a chance to

8 look at all of these exhibits. Do you have copies

9 of them?

10 MR. DAVIS: I have copies of them and been going

11 along.

12 JUDGE RILEY: Do you have any objection to the

13 motion to admit them into evidence?

14 MR. DAVIS: No. I mean, I don't -- like I say, I

15 don't know.

16 JUDGE RILEY: I understand.

17 MR. DAVIS: Whatever you think is right.

18 JUDGE RILEY: It's your privilege to object under

19 any circumstances.

20 MR. DAVIS: I would imagine they're correct, but,

21 again, I think this is all very fishy to me, very,

22 very fishy.

1 JUDGE RILEY: I understand.

2 All right. Then Com Ed Exhibits 1
3 through 9 are admitted into evidence.

4 (Whereupon, Com Ed Exhibit
5 Nos. 1 thru 9 were received
6 in evidence.)

7 Thank you, Mr. Leahy.

8 THE WITNESS: Thank you.

9 MR. GOLDSTEIN: Judge, I need more copies of the
10 exhibits if could we take another short recess.

11 JUDGE RILEY: How many more do you have?

12 MR. GOLDSTEIN: Just one more exhibit, but it's
13 multi-page.

14 JUDGE RILEY: Okay. About five minute? Six
15 minutes?

16 MR. GOLDSTEIN: Five minutes.

17 JUDGE RILEY: Six-and-a-half minutes?

18 (Whereupon, Com Ed Exhibit
19 Nos. 10(a),(b),(c) & (d) were
20 marked for identification.)

21 Now we are back on the record.

22 Mr. Goldstein, you have got another

1 witness?

2 MR. GOLDSTEIN: Yes. Thank you, Judge. I call
3 Thomas Rumsey.

4 (Witness sworn.)

5 JUDGE RILEY: Please proceed.

6 THOMAS R. RUMSEY, JR.,
7 called as a witness herein, having been first duly
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY

11 MR. GOLDSTEIN:

12 Q. Please state your name, by whom are you
13 employed, and in what capacity?

14 A. My name is Thomas R. Rumsey, Jr.,
15 R-u-m-s-e-y. I am employed by Com Ed as a meter
16 mechanic special.

17 Q. And how long have you been employed by
18 Com Ed and how long have you had your current
19 position?

20 A. I've been employed by Com Ed for over 30
21 years and in the current position I'm in now it's
22 been 11 years.

1 Q. And prior to becoming a meter mechanic
2 special, what other positions did you hold in the
3 metering department?

4 A. I was a meter reader, and I was a meter
5 mechanic junior and worked my way up to meter
6 mechanic special.

7 Q. During the course of your employment with
8 Com Ed, could you generally describe what experience
9 you have had in testing meters?

10 A. In the last 11 years I have analyzed or
11 tested over 60,000 meters of every type. I have
12 tested voltage and current transformers. I have
13 been involved in purchasing transformers and
14 metering equipment from various vendors. When new
15 technology is purchased, I analyze and advise on
16 those technologies, and I was involved in the last
17 two ICC audits as well.

18 Q. And those were system meter shop audits?

19 A. Yes.

20 Q. And what happens at a meter shop audit?

21 What goes on between -- the interplay between Com Ed
22 and the staff of the Commission?

1 A. Well, my portion of it is to show that our
2 method of testing is sound, that the equipment that
3 we use is accurate, and that we keep records on all
4 our testing results.

5 Q. And would it be fair to say that with
6 respect to anything that has to do with the metering
7 of an electric account, you have personal day-to-day
8 experience in dealing with that?

9 A. Absolutely, yes.

10 Q. Now what do your records show as to when
11 Mr. Davis' demand meter was changed for a new demand
12 meter?

13 A. Well, what I have in front of me doesn't
14 show when it was exchanged. It just shows that he
15 was spoken to on 4-16-09, and it was explained --
16 according to the notes I have here, it was explained
17 -- here we go. I'm sorry. It is here. The meter
18 was exchanged on 4-10-08 (sic). It was exchanged
19 because of the tech could not test the meter in the
20 field. Those are the reasons that were given.

21 Q. And what you are looking at, am I correct,
22 is what has been marked as Com Ed Exhibit 10(a)?

1 A. Yes.

2 Q. Could you go through that exhibit and be a
3 little clearer as to what is shown on this
4 particular exhibit?

5 A. Well, there was a phone call on 4-16-09 that
6 was labeled "complaint resolved," and the person who
7 spoke to Mr. Davis on 4-19 explained that the tech's
8 comments on 4-17 was that meter number ending in 131
9 was exchanged since the tech could not test the
10 meter in the field. It was brought back to be
11 tested in our meter department, and this person also
12 informed Mr. Davis that the tech also reported that
13 it was explained that the four large coolers that
14 are running at all, and I assume that they meant
15 type and times after that, and they stopped after
16 the word "all."

17 Q. And could you explain for the judge and
18 Mr. Davis what type of meter was exchanged and what
19 type of new meter was put in place at Mr. Davis'
20 location?

21 A. The type meter that was exchanged is what's
22 known as a single-phase cum demand meter and the

1 type was an IKLSEC, which is a GE, General Electric,
2 manufactured meter. That's the one that was pulled
3 out. The one that was put in is also a single-phase
4 cum demand meter and its type is a a J -- CJLSEC
5 size 47, and the difference is this one is
6 manufactured by Elster instead of General Electric.

7 JUDGE RILEY: By who?

8 THE WITNESS: Elster.

9 JUDGE RILEY: E-l-s-t-e-r?

10 THE WITNESS: E-l-s-t-e-r, yes, sir.

11 MR. GOLDSTEIN: Q. Do these meters perform the
12 same function in measuring demand?

13 A. Yes.

14 Q. All right. Let me show you -- you have
15 already discussed Com Ed Exhibit 10(a). Let's go on
16 to Com Ed Exhibit 10(b). Do you have that in front
17 of you?

18 A. Yes, I do.

19 Q. What is shown on this exhibit?

20 A. The meter that was pulled from the account
21 was tested on May 8, 2008 and it tested at a hundred
22 percent at each load.

1 Q. And do you have the meter in the hearing
2 room with you today?

3 A. Yes, I do.

4 Q. Could you pull that out, please.

5 A. Sure. Here it is.

6 Q. Now this is a cumulative demand meter; is it
7 not?

8 A. Yes, it is.

9 Q. And could you describe for the judge and
10 Mr. Davis how a test was performed on that meter?

11 A. All right. This meter is inserted to a test
12 board and the test board is configured in such a way
13 to simulate the service that it was on. It is
14 energized and a current is drawn through the meter.
15 There are test pulses that come out of this opti
16 port. The test port calculates the amount of KW and
17 at every time -- and in this particular case this
18 meter has what's called a KT06, so this meter had a
19 disk. Any time it spun around, it represents 6
20 watt-hours' worth of usage. Every time it uses 6
21 watt-hours, it sends a pulse out of this opti port.
22 We put a receptor up to this and it collects the

1 pulses.

2 JUDGE RILEY: Okay. Receptor to the opti

3 port --

4 THE WITNESS: Yes. It's a little pulse receptor

5 and it compares what it reads with what the test

6 board is supplying. So it says that this meter was

7 supplying 6 watt-hours every time it pulsed, how

8 close -- how close was it. In this case it was

9 100.15 percent in full load; 100.11 percent in power

10 factor, and 100.06 percent in light load.

11 All right. There is a test amperage

12 for this type of meter that's 30 amps. We call that

13 full load. Then for power factor, we test it at 30

14 amps, and we lag the AC sign wave 50 percent, so

15 it's out of phase, so it's as far out of phase as it

16 can get, so we see how accurate the meter is when

17 the power's out of phase, then the light load is

18 10 percent of full load, so in light load we test it

19 at 3 amps.

20 MR. GOLDSTEIN: Q. And the test results are

21 shown as left test data on the right-hand side of

22 the exhibit; is that correct?

1 A. That's correct.

2 Q. And are those test results within the

3 standards of the Illinois Commerce Commission?

4 A. Yes, they are.

5 Q. And the testing of the meter is that in

6 accordance with the standards of the Illinois

7 Commerce Commission?

8 A. Yes.

9 Q. Okay. Let's go on to what has been marked

10 as Com Ed Exhibit 10(c). What is shown on this

11 exhibit --

12 A. These are --

13 Q. -- Mr. Rumsey?

14 A. These are test results from April 8th of

15 '09, and these are my test results. I tested this.

16 Q. And did you test this particular meter in

17 the exact same fashion as was previously tested?

18 A. Yes. One difference -- a small difference

19 but, when I tested it, instead of doing one pulse

20 per test, I did five pulses in full load, and five

21 in power factor, and two in light load. That's the

22 only difference. I did a more thorough test.

1 Q. And are the results essentially the same as
2 the previous test?

3 A. Yes.

4 Q. And they are within the Commission's
5 standards?

6 A. Yes.

7 Q. Let's now look at what's been marked as
8 Com Ed Exhibit 10(d). What is shown on this
9 particular exhibit, Mr. Rumsey?

10 A. These are test results from the meter that
11 is currently installed at the address, the
12 manufactured test results.

13 Q. And this was what the manufacturer tested
14 the meter prior to its being inserted into
15 Mr. Davis' electric service?

16 A. That's correct.

17 Q. And when was that test made?

18 A. That test was made on October 12, 2007.

19 Q. All right. And what did the results of that
20 test show --

21 A. These --

22 Q. -- those tests?

1 A. Those are all a hundred percent load as
2 well.

3 Q. And so with respect to the old meter and
4 new meter, what do you conclude with respect to how
5 the old meter and the new meter were operating with
6 respect to Mr. Davis' location?

7 A. The old meter and the new meter are
8 recording usage accurately.

9 Q. And are they recording usage within Commerce
10 Commission standards?

11 A. Yes.

12 Q. Now in your experience in testing meters and
13 dealing with meters, is a demand meter the
14 appropriate meter for Mr. Davis' establishment as a
15 bar?

16 A. Yes. As a commercial, yes.

17 Q. And if Mr. Davis' building were to be
18 rewired to separate the bar and the apartment, who
19 would be responsible to do the wiring and provide
20 the meter socket?

21 A. That would all be Mr. Davis, the customer.

22 Q. And, finally, Mr. Rumsey, how does Com Ed

1 determine what type of meter goes into a particular
2 building?

3 A. Well, that's done by some of the engineers
4 in our department. That's done by another entity
5 besides myself.

6 Q. Well, would a residential meter be placed in
7 a building that has both a bar and a residential
8 unit?

9 A. Not to my knowledge, no.

10 Q. Now with respect to the various portions of
11 Com Ed Exhibit 10,(a), (b), (c), and (d), these are
12 screen prints taken from the books and records of
13 Com Ed, are they not?

14 A. Yes, they are.

15 Q. And they are kept in the ordinary course of
16 Com Ed's business, are they not?

17 A. Yes, they are.

18 Q. Is there anything else you would like to add
19 to your testimony?

20 A. No.

21 MR. GOLDSTEIN: I have nothing else. I would
22 move into evidence Com Ed Exhibits 10(a), (b), (c),

1 and (d).

2 JUDGE RILEY: Okay. I'll hold the ruling in
3 abeyance until Mr. Davis has had a chance to ask
4 questions.

5 Do you have any cross-examination for
6 the witness?

7 MR. DAVIS: Yes, a few.

8 JUDGE RILEY: Please.

9 CROSS EXAMINATION

10 BY

11 MR. DAVIS:

12 Q. Why couldn't the guy test it in the field
13 when he came to exchange it?

14 A. I couldn't answer that. I wasn't there.

15 Q. Is that the only meters brand-wise that you
16 guys have is GE and Elster?

17 A. No.

18 Q. Okay. Is there a reason why you picked that
19 to put on my 106-year old building, brand new
20 company, brand new meter?

21 A. Well, these are the meters that we're
22 currently putting in. The other meters that you

1 refer to are obsolete and no longer used. So when
2 they are pulled off of service, they are retired.

3 Q. Why did Com Ed switch companies from General
4 Electric to some Elster company?

5 A. Probably because they got a better deal.

6 Q. Made cheaper.

7 Is the test board that you use that
8 unit on back at the office or wherever, is that the
9 same electric as coming out of my 106-year old
10 building and wiring?

11 A. Oh, absolutely, yes.

12 Q. There's no --

13 A. No.

14 Q. -- difference in the way the place is wired
15 or anything like that? That has nothing to do with
16 it?

17 A. We set this thing up to test in the same
18 configuration as the meters at the service. You
19 have got a condition where you have got a
20 short-to-ground receptor someplace. That's a
21 different issue, but it's set up the exact same way.

22 Q. That's something I wouldn't know. I was

1 wondering about the electricity being pumped into
2 your place, pulled into my place. That's the same
3 after it goes through the old wiring and all that
4 stuff in the building is lost or anything like that
5 because of it being older?

6 A. No. The meter would have --

7 Q. Absolutely no possibility that you know of
8 that could change that?

9 A. No.

10 Q. That's the case then, when they put the
11 meter -- when the guy came to change the meter, I
12 was standing right next to him. Me and him were
13 both right there and watched him put the new one on.

14 Could you explain why the new
15 meter he put on and agreed with me, both looking at
16 it, ran half the speed that the old one did?

17 A. I could tell you that the techs that install
18 these are not experts at how a meter works. The
19 difference between one brand and another brand the
20 display is completely different. So even though --

21 Q. Even though they look identical?

22 A. They don't look identical.

1 Q. Well, the line that runs across looks
2 identical. Just the actual digital line, I'm not
3 talking about, not the actual look of the meter,
4 even though it does look pretty similar, but just
5 the line goes across from the old one to the new
6 one, that looks pretty much the same.

7 A. The line that runs across one of them might
8 run across once to represent 6 watt-hours and the
9 line on the other one might run across twice to
10 represent 6.

11 Q. I'm just talking about the one line --

12 A. That's what I'm talking about.

13 Q. -- and that's constantly running.

14 A. That's right. As long as there's current
15 flowing through that meter, that thing's running,
16 yes, sir.

17 Q. So visibly slower doesn't --

18 A. No.

19 Q. -- doesn't mean anything?

20 A. No. That's not how that display is built.

21 Q. Why did it take so long for you guys to
22 actually test that meter from when he brought it

1 from my building to you guys? Like it took --

2 A. It doesn't go from your building to us in
3 that manner. It gets brought back to whatever
4 department -- whatever building he works out of and
5 gets shipped to us, and it was tested -- let's see.
6 It was exchanged on 4-17-08 and it was tested on
7 5-8-08 and then it was put into stock to be
8 reused --

9 Q. Okay. Because --

10 A. -- within a few weeks.

11 Q. I guess that's not that long. I wasn't
12 informed of that, like 20, 30 phone calls that I
13 made that every time I talked to somebody else,
14 it's still getting tested. It's still getting
15 tested. That's what I kept getting told. Nothing
16 to do with you. I'm just telling you what happened.

17 And, as far as you know, those are
18 basically the only meters? It doesn't matter how
19 old my building is or anything like that? You
20 couldn't put an older meter on a building or
21 anything like that?

22 A. That has absolutely nothing to do with the

1 way a meter measures usage.

2 MR. DAVIS: That's it. That's all I've got.

3

4 EXAMINATION

5 BY

6 JUDGE RILEY:

7 Q. Mr. Rumsey, just indulge me a moment. I may
8 have heard this before, but I just want to make sure
9 I'm clear. What does -- what is the concept of a
10 demand meter? How does that differ? I have asked
11 it before. How does that differ from a regular
12 meter?

13 A. A regular meter like on a residential will
14 measure kilowatt-hours. A demand meter measures how
15 much you draw from the system in any half-hour
16 period, so that's measured in kilowatts.

17 So I'll give you a quick example. If
18 this pen is pointing to zero (indicating), as you're
19 drawing electricity, there's a little -- this is the
20 old one. It's easier to explain than the electric,
21 but it's essentially the same. There was a pin that
22 used to push this up, and if you use one kilowatt

1 during that half hour, it would stop on one and then
2 that pin would drop down. In the next half hour you
3 use a half kilowatt -- half a kilowatt, it would
4 just come up to here (indicating) and never touch
5 the pin, and then the next one you use two. It
6 moves it back up.

7 So what demand is measuring is the most
8 amount of kilowatts you drew from any -- from the
9 system in any one-half hour period in the billing
10 cycle.

11 Q. Why does the -- why are demand -- correct me
12 if I'm wrong on this, but are demand meters
13 installed exclusively in commercial establishments?

14 A. Because they have so much draw on the
15 system, they draw so much at one time.

16 Q. As opposed to a residence?

17 A. That's right.

18 Q. And so demand meters are not ordinarily used
19 in residences?

20 A. That's correct.

21 Q. Is all commercial establishments are
22 measured with demand meters?

1 A. As far as I know. If there's an exception,
2 I don't know about it.

3 JUDGE RILEY: Okay. I have nothing further.

4 MR. DAVIS: Could I ask just one more thing?

5 JUDGE RILEY: Sure.

6 RECROSS EXAMINATION

7 BY

8 MR. DAVIS:

9 Q. Like you say, this demand meter, it goes
10 with all -- now what I'm trying -- is there a
11 difference between, you know, this building and a
12 smaller building as far as the demand meter goes?
13 Like is there a certain charge that I'm getting
14 charged because it's a demand meter as opposed
15 to -- like this building is ten times the size of my
16 place. So are they being -- am I being charged the
17 same demand amount as they are because it's a demand
18 amount?

19 A. What you are asking me that's not a question
20 I can answer. I don't have any expertise in how
21 people are charged. My expertise is how the meter
22 functions.

1 JUDGE RILEY: Any redirect?

2 MR. GOLDSTEIN: Just one or two --

3 JUDGE RILEY: Go ahead.

4 MR. GOLDSTEIN: -- clarifying questions, Judge.

5 REDIRECT EXAMINATION

6 BY

7 MR. GOLDSTEIN:

8 Q. Am I correct that with respect to a demand

9 meter it measures peak usage in 30-minute periods?

10 A. Yes.

11 Q. And the metering equipment that's used in

12 the building has nothing to do with the size of the

13 building, does it?

14 A. No.

15 MR. GOLDSTEIN: I have nothing else.

16 JUDGE RILEY: Okay. Now we have got the matter

17 of Exhibits 10(a), (b), (c), and (d).

18 MR. GOLDSTEIN: Correct. I'm moving them --

19 JUDGE RILEY: You are moving them into evidence.

20 And, again, Mr. Davis, any objection?

21 MR. DAVIS: (Witness shaking head.)

22 JUDGE RILEY: Then Respondent's Exhibits 10(a),

1 (b), (c), and (d) are admitted into evidence.

2 (Whereupon, Respondent's/CWE
3 Exhibit Nos. 10(a), (b),
4 (c), and (d) were received in
5 evidence.)

6 Thank you, Mr. Rumsey.

7 MR. GOLDSTEIN: I don't believe I have another
8 witness at this time, Judge.

9 JUDGE RILEY: You don't?

10 MR. GOLDSTEIN: I do not believe so.

11 JUDGE RILEY: All right. We do have more
12 exhibits to be marked?

13 MR. GOLDSTEIN: No, that's it.

14 JUDGE RILEY: That's it? All right then --

15 MR. GOLDSTEIN: You were suppose to ask
16 questions.

17 JUDGE RILEY: Yes. I had a couple of questions
18 occurred to me for Mr. Davis.

19 SEAN DAVIS,
20 called as a witness herein, having been first
21 duly sworn, resumed the stand and testified further
22 as follows:

1 EXAMINATION

2 BY

3 JUDGE RILEY:

4 Q. Do you have any of the -- other than the
5 bill that you presented here as evidence today, the
6 current bill, do you have any other bills -- any
7 other prior bills that you brought with you you were
8 able to hang on to?

9 A. No. And the bills that they sent me they
10 said it didn't go back to that month that when it
11 was changed out. They said their records didn't go
12 back in the billing to those two months, basically
13 another thing I just don't understand.

14 Q. Okay. The structure in question is this a
15 wood frame --

16 A. (Witness nodded head.)

17 Q. -- building?

18 A. Yes.

19 Q. Two stories?

20 A. Yes. I have a picture of it.

21 Q. Okay.

22 A. I have a picture if you want to see.

1 Q. No. I was just trying to get a mental
2 picture.

3 Is it gas or electrically heated?

4 A. The bar is gas. The apartment is electric.

5 Q. The apartment is electrically heated?

6 Okay. You said the apartment is rented
7 sporadically? The usage up there is sporadic?

8 A. Yes.

9 Q. Do you know what kind of appliances are up
10 there?

11 A. Refrigerator, electric oven, and microwave.
12 When people move in, they bring them. They usually
13 have a microwave.

14 Q. When people are living there, particularly
15 in the winter, there's a lot of electric usage?

16 A. Yes. Up in the apartment during the winter,
17 yes.

18 JUDGE RILEY: That's all I have.

19 MR. GOLDSTEIN: I have nothing else, Judge.

20 JUDGE RILEY: All right. That concludes the
21 testimony portion. I admitted your exhibits. I
22 need copies of it.

1 MR. GOLDSTEIN: Exhibit 10, Judge.

2 JUDGE RILEY: I thought I ruled on --

3 MR. GOLDSTEIN: I'm sorry. You have to make
4 copies of --

5 MR. DAVIS: The bill.

6 MR. GOLDSTEIN: -- Mr. Davis' bill.

7 JUDGE RILEY: Right. That's the only one that's
8 left.

9 The next order of business would be
10 closing arguments or closing briefs.

11 Mr. Davis, that involves a written
12 effort on the part of the parties to summarize their
13 position in this case, submit it to the Clerk's
14 Office, and containing an argument as to why you
15 should prevail in this matter.

16 MR. DAVIS: I don't have it now.

17 JUDGE RILEY: I'm sorry?

18 MR. DAVIS: I don't have that now.

19 JUDGE RILEY: No. No. No. We set a schedule for
20 that. There would be a date specific for you to get
21 it into the Clerk's Office and that would give you
22 enough time to -- excuse me. The transcript of this

1 matter could be available roughly around two weeks
2 from now. It would be publicly available on the
3 Commission website, so you could recheck -- you
4 could read it and check all the testimony --

5 MR. DAVIS: What's the --

6 JUDGE RILEY: -- and prepare a written brief and
7 submit it to the Clerk's Office.

8 MR. DAVIS: What's the website?

9 MR. GOLDSTEIN: [Www.ICC.Ill.gov](http://www.ICC.Ill.gov).

10 JUDGE RILEY: Right.

11 MR. GOLDSTEIN: And he would have to go to
12 e-docket, log in, and then he would have to do
13 the Clerk's Office e-docket log in --

14 JUDGE RILEY: Right.

15 MR. GOLDSTEIN: -- and then it would ask him --
16 on the right there's several Icons across the top,
17 right of the Icon, and they would ask you what the
18 docket number is, and you punch on that and enter
19 this Docket No. 10-0177, and he would be --

20 MR. DAVIS: 10-0177?

21 JUDGE RILEY: Right.

22 MR. GOLDSTEIN: 10-0177. And he would be able to

1 access the transcript.

2 MR. DAVIS: And that's the e-docket area of the
3 ICC, which you go to ICC Ill.gov, go to the Clerk's
4 Office section, e-docket, and punch in that number?

5 JUDGE RILEY: Right.

6 MR. GOLDSTEIN: Right. And he would just follow
7 the prompts.

8 JUDGE RILEY: Either I or the Clerk's Office
9 could help walk you through it.

10 MR. DAVIS: If I forget, I'll call you.

11 JUDGE RILEY: How much time do the parties think
12 they need to prepare a brief?

13 MR. GOLDSTEIN: I think that's up to Mr. Davis.

14 JUDGE RILEY: A month perhaps?

15 MR. DAVIS: Yes. That's what I was thinking.

16 JUDGE RILEY: Okay.

17 MR. GOLDSTEIN: How much time did you say?

18 JUDGE RILEY: A month.

19 MR. GOLDSTEIN: That's fine.

20 JUDGE RILEY: That's allowing two weeks for
21 access to the transcript.

22 MR. GOLDSTEIN: Right. Give Pat something to do.

1 JUDGE RILEY: Today is May 7th. I thought June
2 4th.

3 MR. GOLDSTEIN: What about June 7th, Judge?
4 That's a month.

5 JUDGE RILEY: That's a month. You want the extra
6 weekend?

7 MR. GOLDSTEIN: Yes.

8 JUDGE RILEY: You want to make it June 7th.

9 And, Mr. Davis, the procedure that
10 follows, once I get the briefs, I take those into
11 consideration. I will write what is called "a
12 proposed order," and it will summarize all of the
13 evidence in this matter. I will submit that to the
14 parties through the Clerk's Office. You are to read
15 that. Mr. Goldstein will read his copy. They will
16 be exactly the same. And anything that you disagree
17 with, you think that I may have summarized
18 inaccurately, interpreted inaccurately, any mistakes
19 I may have made, you will file back with the Clerk's
20 Office something called "exceptions" and say these
21 are the mistakes, these are the misrepresentations,
22 this is where I think the ALJ is wrong, and this is

1 how I think the order should be written, and I will
2 take that into consideration before submitting a
3 final order to the Commission, and it will be their
4 disposition in this matter.

5 Once I get the briefs -- I will submit
6 the proposed order. I will give a certain amount of
7 time for you to provide those exceptions.

8 So --

9 MR. DAVIS: Okay.

10 JUDGE RILEY: -- did I overlook anything,
11 Mr. Goldstein?

12 MR. GOLDSTEIN: No.

13 JUDGE RILEY: Any outstanding motions?

14 MR. GOLDSTEIN: No.

15 JUDGE RILEY: All right. Give me two seconds.

16 Let me make a quick Xerox. I'm going to keep the
17 original and I'm giving you a copy.

18 MR. DAVIS: That's fine.

19 JUDGE RILEY: I have Complainant's Exhibit 1. I
20 have doubled all the exhibits submitted by the
21 respondent.

22 MR. GOLDSTEIN: Let me make one more comment

1 before we close the record, Judge. Mr. Davis owes a
2 bill in excess of 11,000, not that entire bill could
3 be in dispute. He's got to pay something on that
4 bill, Judge, or else he's going to be subject to
5 termination.

6 JUDGE RILEY: I'm not sure --

7 MR. GOLDSTEIN: It's unfair --

8 JUDGE RILEY: -- this is appropriate for the
9 record.

10 MR. GOLDSTEIN: I want to make a record of it if
11 I may. It's unfair to the company not to have
12 Mr. Davis be provided electric service without any
13 payment at all. That's the end of my comment.

14 JUDGE RILEY: Well, it's only fair that I allow
15 Mr. Davis to respond then.

16 MR. GOLDSTEIN: That's perfectly fine.

17 MR. DAVIS: I believe the last time we spoke when
18 we did this over the phone, I offered to pay a
19 thousand to Ms. Merino. I also put that in an
20 e-mail to her, got no response, and willing to pay,
21 how to pay her, whatever you guys want me to do, and
22 I'm actually going to throw a thousand dollars when

1 a big case is going on here. I definitely tried to.

2 JUDGE RILEY: I'm not going to have argument
3 about that back and forth. You made your statement.

4 Mr. Davis, you responded. Do you have
5 anything further then?

6 MR. DAVIS: No.

7 JUDGE RILEY: All right then. This is -- I will
8 also note that I'm not going to take those remarks
9 into consideration in preparation of my order.

10 There being nothing further, I will
11 direct the court reporter to mark this matter heard
12 and taken. Thank you.

13 HEARD AND TAKEN.

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